

REGAN VELASQUEZ,)	
)	
Plaintiff,)	Case No.: 2:09-cv-02265-GMN-PAL
vs.)	
)	ORDER
THE LENDING GROUP, et al.,)	
)	
Defendants.)	
)	

I. BACKGROUND

Page 1 of 3

1 On May 19, 2010, while the case was still on Judge Jones' docket, Defendant
2 Fidelity National Title Insurance Company filed a Motion to Dismiss (ECF No. 30).
3 Pursuant to D. Nev. R. 7-2(b), Plaintiff had fourteen days after service of the Motion to
4 file a Response; therefore, Plaintiff had until June 6, 2010 to file a Response. Not only
5 did Plaintiff fail to meet this deadline, Plaintiff has failed to file any Response at all. Nor
6 has Plaintiff filed anything in this case since February of 2010.

7 On June 1, 2010, Defendants HSBC Mortgage Services, Inc. and Housekey
8 Financial Corporation filed their own Motion to Dismiss (ECF No. 34). Defendant
9 MERS joined the Motion on the same day (ECF No. 35). Plaintiff has also failed to
10 respond to that Motion to Dismiss.

11 It also appears that Plaintiff has failed to keep his address up to date with the
12 Court, as mail sent to the address he provided the Court has been repeatedly returned,
13 (*see, e.g.*, ECF Nos. 27, 40, & 47).

14 **II. DISCUSSION**

15 Local Rule 7-2 (d) provides that "[t]he failure of an opposing party to file points
16 and authorities in response to any motion shall constitute a consent to the granting of the
17 motion." D. Nev. R. 7-2(d). As the Ninth Circuit has held, "[f]ailure to follow a district
18 court's local rules is a proper ground for dismissal." *Ghazali v. Moran*, 46 F.3d 52, 53
19 (9th Cir. 1995); *see, e.g., Roberts v. United States of America*, 01-cv-1230-RLH-LRL,
20 2002 WL 1770930 (D. Nev. June 13, 2002). However, before dismissing a case for
21 failing to follow local rules or for failure to prosecute, the district court must weigh five
22 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's
23 need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
24 availability of less drastic sanctions; and (5) the public policy favoring disposition of
25 cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

Under this test, “the public’s interest in expeditious resolution of litigation always favors dismissal.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also, the Court’s need to manage its docket is manifest. *See State Farm Mutual Automobile Insurance Company v. Ireland*, 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov. 30, 2009). Further, the Plaintiff’s failure to respond to Defendants’ Motions has unreasonably delayed the resolution of this case, and such unreasonable delay “creates a presumption of injury to the defense,” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

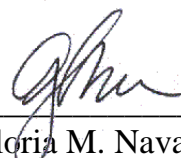
The fifth factor also does not weigh in favor of Plaintiff because it does not appear that this case was likely to be decided on the merits anyway: Plaintiff has failed to take any action to prosecute this case since February of 2010. Further, in his counsel’s Motion to Withdraw (ECF No. 23), his counsel indicated that “Plaintiff, understanding the posture of the matter in Federal Court, has chosen to abandon his claims and terminate his current counsel rather than continuing to throw more money into a case in which the property has been lost already.” (Mot. 4:1-3, ECF No. 23.)

These four factors outweigh factor (4) and, accordingly, Defendants’ Motions to Dismiss are GRANTED. The claims over which this court retains jurisdiction are dismissed without prejudice.

CONCLUSION

IT IS HEREBY ORDERED that Defendants’ Motions to Dismiss (ECF Nos. 30 & 34) are **GRANTED**. All claims that are still under the jurisdiction of this Court are **DISMISSED without prejudice**.

DATED this 14th day of March, 2011.



Gloria M. Navarro
United States District Judge